P/1318-129

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF APPEALS AND INTERFERENCES

In re Patent Application of:

Peter Kassan et al.

Serial No.: 09/845,611

Filed: April 30, 2001

Date: January 31, 2005

Group Art Unit: 3621

Examiner: Firmin Backer

For: METHOD AND SYSTEM FOR CORRELATING JOB ACCOUNTING INFORMATION WITH SOFTWARE LICENSE INFORMATION

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

APPEAL BRIEF TRANSMITTAL LETTER - FEE COMPUTATION

Sir:

Transmitted herewith in triplicate is an Appeal Brief in the above-identified application.

OFGS Check No. 19430, which includes the required fee for filing this Appeal Brief ($250.00 - small entity), is enclosed.

In the event the actual fee is greater than the payment submitted or is inadvertently not enclosed or if any additional fee during the prosecution of this application is not paid, the Patent Office is authorized to charge the underpayment to Deposit Account No. 15-0700.

If this communication is filed after the shortened statutory time period had elapsed and no separate Petition is enclosed, the Commissioner of Patents and Trademarks is petitioned, under 37 C.F.R. §1.136(a), to extend the time for filing a response to the outstanding Office Action by the number of months which will avoid abandonment under 37 C.F.R. §1.135. The fee under 37 C.F.R. § 1.17 should be charged to our Deposit Account No. 15-0700.

I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to: Mail Stop Appeal Brief - Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on January 31, 2005:

_____Max Moskowitz_____
Name of applicant, assignee or
Registered Representative

_____
Signature

___January 31, 2005___
Date of Signature

MM:JJF:ck

Respectfully submitted,

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APPEAL BRIEF UNDER 37 C.F.R. §1.192

Sir:

This appeal is taken from the Examiner's final rejection dated July 30, 2004, in

connection with the above-identified application. The Notice of Appeal was filed in the United

States Patent and Trademark Office on November 30, 2004.

Real Party in Interest

The real party in interest in the above-identified application is:

ISOGON CORPORATION
330 7th Avenue
New York, New York 10001

Related Appeals and Interferences

There are no related appeals or interferences of which applicants are aware regarding the

above-identified application.

Status of Claims

Claims 1-22 are pending and on appeal herein.

Claims 1-22 stand rejected on grounds of anticipation by Frison (6,049,789).

Status of Amendments

An Amendment After Final Rejection was filed on November 30, 2004.

Summary of Invention

The invention is a method and system that improves computer software job accounting and software chargeback functions, for example, at computer data centers. More particularly, the invention combines the functionality of a job accounting and chargeback subsystem (JACS), a license manager and a job accounting and software use intercoupling facility that intercouples use information provided by the license manager subsystem with chargeback data provided by the JACS.

The software license manager component includes a product use monitoring subsystem that handles requests for and grants rights to the use of licensed software products. The software license manager further develops software product use information. The use of software products to which the product use information relates requires payment of specified license fees to one or more licensors.

The JACS subsystem develops "chargeback data." The chargeback data is applicable to "charged entities" that are separate of and unrelated to the licensors and to the specified license fees, and the JACS system allocates license fees in accordance with predefined criteria based on the charge entities' utilization of software or computer facilities.

The job accounting and software use intercoupling facility provides software- product chargeback information by intercoupling the software product use information (provided by the software license manager) and the chargeback data (provided by the JACS subsystem). Thus, the combination improves computer software job accounting and chargeback functionality.

Issues

Whether claims 1-22 are unpatentable under 35 USC 102(e) as being anticipated by Frison (6,049,789).

Grouping of Claims

Claims 1-22 stand or fall together.

Argument

The sole reference relied upon in the Office Action is Frison et al. ("Frison," U.S. Patent No. 6,049,789). Respectfully, this reference neither anticipates nor suggests crucial elements of the invention that are defined in claim 1. With respect to the elements of claim 1, as understood, the Examiner has referred the applicants to the abstract, Fig. 1, 2 and 7, and column 1, lines 48-61, and column 2, lines 5-column 4, line 46 of Frison. Respectfully, careful study of the portions of Frison relied upon shows that this reference contains structural differences and is functionally, as well, different from the claimed invention.

In Frison, a "PPU licensing system" 100 comprises a conventional prior art license management system, as described in the background section of the written specification in applicants' pending patent application. For example, Frison's PPU licensing management system 100 measures software usage in order to grant pay-per-use licenses for software applications. The PPU licensing management system 100 includes a data collection component that is described as being able to monitor the granting of licenses and to periodically report the state and usage of licenses. In other words, the licensing management system 100, via a licensor PPU licensing management system and a licensee PPU licensing management system, collects usage information and reports the information in order to grant licenses for the use of software products. One module, billing module 308, operates to process the stored usage data to generate usage reports 312 and/or invoices 314 for the licensees. (see column 4, lines 62-column 5, line 19). Thus, the licensing management system taught by Frison operates as a typical prior art license management system to generate usage information by licensees to grant licenses and report the state of licenses usage to licensors.

Applicants respectfully disagree with the Examiner's assertion that Frison anticipates applicant's claim1. More particularly, the Examiner states by way of parenthetical that the job accounting and chargeback subsystem (JACS) of applicants' claim 1 is effectively the billing system 308 taught by Frison. As noted above, the JACS creates chargeback data which, as defined in applicants' specification, allocates the cost of a particular product to different departments within a party or a user that has purchased the right to use a particular software

product. Frison does not teach or suggest a subsystem that develops chargeback data that is applicable to charged entities that are separate of and unrelated to the software product licensors and to the specified license fees. Further, Frison is silent with respect to the "charged entities" defined in applicants' claim 1.

Further, Frison does not teach or suggest applicants' claim 1 job accounting and software use intercoupling facility. This feature of applicants' claim 1 intercouples use information provided by the software license manager with the chargeback data provided by the JACS. The intercoupling facility provides software-product chargeback information, for example, based upon resource usage, the cost of a software product, the details of the software product's license, and is preferably organized according to the software product for which the data are obtained (see, for example, applicants' specification, pages 16-18).

Applicants respectfully submit that the structure defined in applicants' claim 1 is patentably distinct from the software paper use licensing system of Frison. In applicants' claim 1, the software license manager develops software product use information which is communicated to the JACS for developing chargeback information for charged entities, which is further intercoupled by the job accounting and software use intercoupling facility to provide the software-product chargeback information. Such structure and functionality is taught or suggested by Frison.

Claims 2-22 depend directly or indirectly from claim and, therefore, are patentable for the same reasons, because they include features which in combination with the claim(s) from which they depend are not taught, suggested or disclosed by Frison.

Conclusion

In view of the foregoing remarks, it is respectfully submitted that the applicants have laid out a prima facie case that shows that claim 1 is not anticipated by Frison. Claims 2-22 depend directly or indirectly from claim 1 and are not, therefore, anticipated by Frison. Therefore, reversal of the rejection of record with respect to each of the grounds of rejection is earnestly solicited.

Our Check No. 19430 which includes the amount $250.00 to cover the Appeal Brief is attached hereto. This brief is being submitted in triplicate in accordance with 37 CFR 1.192 and applicants reserve the right to request an oral hearing upon receipt of the Examiner's Answer.

If this communication is filed after a shortened statutory time period has elapsed and no separate Petition is enclosed, the Commissioner of Patents and Trademarks is petitioned, under 37 C.F.R. §1.136(a), to extend the time for filing a response to the outstanding Office Action by the number of months which will avoid abandonment under 37 C.F.R. §1.135. The fee under 37 C.F.R. §1.17 should be charged to our Deposit Account No. 15-0700.

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</td><td>

Respectfully submitted,

</td></tr>
<tr><td>

Max Moskowitz
Name of applicant, assignee or Registered Representative

Signature

January 31, 2005
Date of Signature

</td><td>

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<u>APPENDIX</u>

The Claims on Appeal Are:

1.   A job accounting and chargeback system for software products, the system comprising:

a software license manager comprising a software product use monitoring subsystem that handles requests for and grants rights to use licensed software products, the use of which requires payment of specified license fees to one or more software product licensors, said software license manager further operable to develop software product use information;

a job accounting and chargeback (JACS) subsystem that develops chargeback data that is applicable to charged entities that are separate of and unrelated to the software product licensors and to the specified license fees, and said job accounting and chargeback system allocates the specified license fees in accordance with predefined criteria based on the charged entities utilization of software or computer facilities; and

a job accounting and software use intercoupling facility that intercouples the software product use information provided by the software license manager with the chargeback data in a manner that provides software-product chargeback information.

2.   The system of claim 1, further including a process-data collector that develops process-related data and the job accounting and chargeback subsystem deriving identities of the charged entities from the process-related data.

3.   The system of claim 2, in which the software-product chargeback information comprises cost information for the use of the software products and the manager is a license manager.

4.   The system of claim 2, in which the software-product chargeback information is referenced to software product vendors.

5.   The system of claim 2, in which the process-related data comprises process detail records.

6.   The system of claim 5, in which the process detail records comprise links to event log records.

7.   The system of claim 2, in which the software-product chargeback information comprises process-product-link records and each such record comprises at least two fields.

8.   The system of claim 7, in which the at least two fields include a key field pointing to a process detail record and product key field.

9.   The system of claim 8, in which the product key field comprises a vendor id or a product id.

10.   The system of claim 8, further comprising a third field, which is a link to a particular licensing session.

11.   The system of claim 2, further including a plurality of software clients operable with corresponding client exit routines, components of the job accounting and chargeback subsystem being present in the client exit routines.

12.   The system of claim 2, in which the process-related data comprises system management facility (SMF) records.

13.   The system of claim 2, including a process-to-product link table.

14.   The system of claim 2, including a process-to-product vendor link table.

15.   The system of claim 2, in which the intercoupling facility correlates the software-product chargeback information to specific product licensing sessions.

16.   The system of claim 2, including a facility that develops the software-product chargeback information over selected time periods.

17.   The system of claim 2, including a facility that compares chargeback data against budgeted charges relative to specific software products.

18.   The system of claim 2, including a reporter that generates viewable reports, displaying selected portions of the software-product chargeback information.

19.   The system of claim 18, the reporter including a data sorter.

20.   The system of claim 2, including a facility that allocates to specific products a total cost, which cost is used by the job accounting and chargeback subsystem to develop the chargeback data.

21.   The system of claim 2, including a facility that measures a parameter indicative of the extent of use of different ones of the software products and the parameter being selected from the parameter group consisting of: CPU time; elapsed time; number of queries to a database; number of records retrieved; and use peripherals related to the use of software products.

22.   The system of claim 2, in which the software products act in the system as software clients and the manager is a license manager that acts in the system as a server and including a plurality of license manager agents that execute client exit routines in response to being presented with license requests from the software clients, and further including a JACS client exit routine that interacts with the client exit routine of the license manager agents, in a manner such that the JACS client exit routine obtains the process-related data which is then returned to the client exit routine.